

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

TINA WILLIAMS,

Plaintiff,

v.

**LARRY G. MASSANARI, Acting
Commissioner Social Security
Administration,**

Defendant.

Civil Action No. 01-0847 (RMC)

MEMORANDUM OPINION

Plaintiff Tina Williams has brought this action seeking judicial review of the final decision of the Social Security Commissioner, Larry G. Massanari, denying her application for Supplemental Security Income Benefits. Ms. Williams has moved for a judgement of reversal or, in the alternative, for an order pursuant to 42 U.S.C. § 405(g) remanding the case for a new administrative hearing. The government has moved for a judgment of affirmance. Upon consideration of the briefs filed by the parties and the entire record herein, the motion for judgment of reversal is denied in part and granted in part, and the motion for judgement of affirmance is denied. This matter is remanded to the Social Security Administration for a new administrative hearing.

Background Facts

Plaintiff Tina Williams is a 47-year old female who has been diagnosed with fibromyalgia syndrome which affects the right side of her body, including her shoulder, hip, wrist and back. She applied for Supplemental Security Income benefits on December 11, 1998. Her claim was initially denied on January 28, 1999, and again on February 5, 1999, following Ms. Williams's request for

reconsideration. A hearing was held before an Administrative Law Judge ("ALJ") on November 12, 1999, at which Ms. Williams was represented by counsel. In a decision dated December 13, 1999, the ALJ found that Ms. Williams was not disabled within the meaning of the Social Security Act and denied her application for benefits. The Appeals Council, acting on Ms. Williams's request for a review of the Hearing Decision, found on March 9, 2001, that there was no basis for granting her request for review. Ms. Williams now moves this Court for a judgement of reversal or an order remanding the case to the Social Security Administration ("SSA") for a new administrative hearing. The government moves for an order affirming the denial of benefits.

Analysis

A. Disability Determination

The Social Security Act defines disability as "an inability to engage in any substantive activity by reason of medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). The Commissioner employs a five-step sequential process in determining whether a claimant is disabled under the Act. *See* 20 C.F.R. § 416.920. The ALJ must first determine whether the claimant is working or performing substantial gainful activity. *See* 20 C.F.R. § 416.920(b). If not, the ALJ must then determine whether the claimant has a severe impairment, which is "any impairment or combination of impairments which significantly limits [the claimant's] physical or mental ability to do basic work activities." 20 C.F.R. § 416.920(c). If the claimant has a severe impairment or combination of impairments, the ALJ must then determine whether the impairment meets or is equal to an impairment listed in 20 C.F.R. Part 404, Subpart P, Appendix 1. *See* 20 C.F.R. § 416.920 (d). If not, the ALJ must determine the claimant's residual

functional capacity, and whether this capacity permits the claimant to perform her past relevant work. *See* 20 C.F.R. § 416.920(e). If the claimant cannot perform her past relevant work, the ALJ must determine whether the claimant can perform any other work in the national economy, taking into account her age, education and past work experience. *See* 20 C.F.R. § 416.920(f)(1).

B. Standard of Review

When reviewing an ALJ's decision, the District Court must carefully evaluate the entire administrative record and determine whether the ALJ's decision is supported by "substantial evidence" and whether the ALJ's decision is tainted by an error of law. *See* 42 U.S.C. § 405(g); *Davis v. Heckler*, 566 F. Supp. 1193, 1995 (D.D.C. 1995). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 402 (1971) (quotations omitted). Even though the Court must carefully scrutinize the entire record, it must not substitute its own judgement for that of the ALJ. *See Chevalier v. Shalala*, 874 F. Supp. 2, 3 (D.D.C. 1995). In conducting this evaluation, the Court must keep in mind that "the broad purposes of the Act require a liberal construction in favor of disability." *Taylor v. Heckler*, 595 F. Supp. 489, 493 (D.D.C. 1984) (quotations omitted).

C. The Ruling of the Administrative Law Judge

Ms. Williams does not contest the findings of the administrative law judge under the first three steps of the sequential evaluation process. She does contend that the ALJ erroneously relied on the testimony of a vocational expert and improperly failed to recontact Ms. Williams's treating physician. Because this Court determines that the ALJ should have recontacted Ms. Williams's treating physician, it does not reach the question of the propriety of the hypothetical question posed to the vocational expert.

Under the treating physician rule, the ALJ must give substantial weight to the opinion of a claimant's treating physician. *See Poulin v. Bowen*, 817 F.2d 865, 873 (D.C. Cir. 1987). In finding that Ms. Williams had the residual capacity to perform light work, the ALJ stated that he did not grant controlling weight to the opinion of plaintiff's treating physician, Dr. Clauw, because Dr. Clauw's "opinion is conclusory and unsupported by medical signs, or laboratory findings." Tr. 14. Ms. Williams contends that because the ALJ deemed Dr. Clauw's report inadequate, the ALJ should have recontacted Dr. Clauw in an attempt to obtain additional information. In response, the Commissioner acknowledges that the ALJ did not recontact Dr. Clauw, but asserts that the ALJ had no obligation to recontact Dr. Clauw because such contact would have been unavailing. Specifically, the Commissioner asserts that "recontact is necessary only when such is required to resolve a conflict or ambiguity and the record is otherwise inadequate to render a decision." Motion for Affirmance at 15. Unfortunately, the government misreads the applicable regulation. 42 C.F.R. § 416.912 (e)(1) states that the SSA will recontact the treating physician "when the report from your medical source contains a conflict or ambiguity that must be resolved, the report does not contain all the necessary information, or does not appear to be based on medically acceptable clinical and laboratory diagnostic techniques." 42 C.F.R. § 416.912 (e)(1) (emphasis added).

It is noted that the regulations provide that the SSA "may not seek additional evidence or clarification from a medical source when we know from our past experience that the source either cannot or will not provide the necessary findings." 20 C.F.R. 416.912(e)(2). An unsupported assertion in the government's brief that "recontacting Dr. Clauw could not remedy such a deficit" is insufficient evidence of "past experience" which would excuse SSA from recontacting the treating physician. 42 C.F.R. § 416.912(e)(2). The ALJ should have recontacted Dr. Clauw to see if he

could provide the requisite "medical signs, or laboratory findings" or made his own determination that recontact was excused before denying the claimant benefits. *See Corey v. Barnhart*, Cause No. IP01-0320-C-T/G, 2002 U.S. Dist. LEXIS 7146, at *15 (S.D. Ind. 2002) (error for ALJ not to contact treating physician when ALJ determined that treating physician's report was not supported by objective findings) (citing *Cleveland v. Apfel*, 99 F. Supp. 2d 374, 380 (S.D.N.Y. 2000) ("When the opinion submitted by a treating physician is not adequately supported by clinical findings, the ALJ must attempt, *sua sponte*, to develop the record further by contacting the treating physician to determine whether the required information is available.")).

Conclusion

Because the ALJ failed to recontact Ms. Williams's treating physician to obtain additional information when he found the treating physician's report inadequate, the Commissioner's motion for judgment of affirmance is denied, Ms. Williams's motion for reversal is granted in part and denied in part, and the case is remanded for a new administrative hearing so that the ALJ can further develop the record regarding the treating physician's report. A separate Order will accompany this Memorandum Opinion.

ROSEMARY M. COLLYER
United States District Judge

Date: March 3, 2003